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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,125	07/08/2003	Axel Grandt	JM-040	2218

7590 09/26/2007  
Nicola A. Pisano, Esq.  
Suite 200  
11988 El Camino Real  
San Diego, CA 92130

EXAMINER
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PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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09/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/616,125

Applicant(s)

GRANDT, AXEL

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,9,10,13,14,19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,11,12,15-18 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/13/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,5,6,11,12,15-18,21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tower et al. (EP 1057460) in view of Globerman et al. (WO 96/26682) and Brown et al. '305. Tower discloses (Fig. 2) a plurality of circumferential rings affixed together to form the stent. Tower also discloses that the rings are formed from wire shaped into sinusoidal bends, col. 4, lines 55-58 and col. 5, lines 33-39. Tower discloses implanting the stent in a blood vessel, paragraph 36. However, Tower fails to disclose the circumferential rings of tubular member material being provided with pores and a lumen to contain a therapeutic material for delivery to a treatment site. Globerman et al. teach (Fig. 5) a tubular material **14** used as a stent with a lumen **16**.

Globerman also teaches the stent tubular member can include a multiplicity of pores in fluid communication with the lumen (page 7, lines 11-15) for a therapeutic agent disposed within the lumen to be eluted from the stent. Brown et al. teach (Fig. 2) a stent with circumferential sections including a channel **20** for therapeutic material. Brown discloses that bioabsorbable polymers (col. 8, lines 62-65, col. 9, line 1, col. 10, lines 19-21) are used as means for controlling release from the channel into the lumen of the patient. It would have been obvious to one of ordinary skill in the art to incorporate a lumen with a absorbable polymer having a drug disposed in the tubular members forming the circumferential rings of Tower's stent per the teachings of Globerman and Brown. The modification provides the doctor the ability to treat the patient locally at a diseased or stenosed region in a patient's blood vessel.

Claims 7,8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tower et al. (EP 1057460) in view of Globerman et al. (WO 96/26682) and Brown et al. '305 as applied to claim 1 above, and further in view of Harry (2002/0038146). Tower as modified by Globerman and Brown is explained supra. Brown does disclose the pores can be any type of opening or shape, col. 6, lines 15-18. However, Tower in view of Globerman and Brown fail to disclose the pores vary in size or shape with respect to one another. Harry teaches (Figs. 2,3) pores varying in size on the stent. Harry also teaches (Fig. 8) pores that vary in shape on the stent. It would have been obvious to one of ordinary skill in the art to vary the size or shape of the pores as taught by Harry with the stent of Brown to provide different amounts of therapeutic material released from the stent.

***Response to Arguments***

Applicant's arguments with respect to claims 1,15,23 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Friday from 8:30am to 6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at 571-272-4756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).